

ADDITIONAL COLLECTION DISTRICTS IN CALIFORNIA.

JUNE 15, 1860.—Ordered to be printed.

Mr. JOHN COCHRANE, from the Committee on Commerce, made the following

REPORT.

The Committee on Commerce, to whom was referred House bill to amend an act entitled an act to create additional collection districts in the State of California, and to change the existing districts therein, &c., and also the petition to change the existing districts of Michilimackinac and Milwaukie, report:

That the districts referred to and embraced in said bill and petition have been duly and carefully provided for in the general bill now before the House in relation to the collection districts and their reorganization, and your committee therefore report back said bill and petition, and ask that they lie upon the table.

2. AS ACTING SECRETARY OF STATE.

Date of appointment.	Duration of service under it.	Number of days.
August 10, 1833...	To the 24th of August, 1833, inclusive.	15
November 11, 1833.	To the 15th of Nov., 1833, inclusive...	5
October 11, 1834...	To the 21st of October, 1834, inclusive.	21
May 2, 1835	To the 13th of June, 1835, inclusive...	43
July 6, 1835	To the 13th of July 1835, inclusive....	8
August 31, 1835...	To the 8th of Sept., 1835, inclusive....	9
September 28, 1835.	To the 19th of October, 1835, inclusive.	22
May 19, 1836	To the 23d of May, 1836, inclusive....	5
July 7, 1836	To the 29th of August, 1836, inclusive.	54
September 27, 1836.	To the 9th of Nov., 1836, inclusive....	44
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The evidence establishes the fact that the claimant was appointed to said offices by the President of the United States, by virtue of the 8th section of the act of May 8, 1792, which provides as follows:

"SEC. 8. *And be it further enacted*, That in case of the death, absence from the seat of government, or sickness of the Secretary of State, Secretary of the Treasury, or of the Secretary of the War Department, or of any officer of either of the said departments whose appointment is not in the head thereof, whereby they cannot perform the duties of their said respective offices, it shall be lawful for the President of the United States, in case he shall think it necessary, to authorize any person or persons, at his discretion, to perform the duties of the said respective offices until a successor be appointed, or until such absence or inability by sickness shall cease."—(1 Stat. at Large, 281.)

The power is here given by express statute to the President of the United States to "appoint any person or persons, at his discretion, to perform the duties of said respective offices" during the "absence, inability, or sickness" of the several Secretaries, or either of them. The power was accordingly exercised by the President, who appointed the claimant, as is shown by the official reports. These reports also show that Mr. Dickins served, as stated above, viz: for 133 days as Secretary of the Treasury, and 226 days as Secretary of State.

The following letter from President Jackson to the claimant, while Acting Secretary of State, will very clearly indicate the character of the services Mr. Dickins had to perform:

"HERMITAGE, August 17, 1836.

"MY DEAR SIR: I have just received your letter of the 1st instant, enclosing the translation of a note from Mr. Gorostera, dated 27th

July, and your reply to it of 1st August, and also the copy of another note from him of the 28th July, and your reply to that of the 1st of August, all of which replies are approved.

"Before this reaches you you will have received a copy of my letter to Governor Cannon disapproving the requisition of General Gaines for one thousand men, and ordering them to be mustered and discharged. My reasons given for this disapproval and order must be satisfactory to the Mexican minister and his government, and convince every one that whilst we require a faithful compliance with their treaty engagements, we strictly adhere to ours, and are determined to maintain a strict neutrality between Mexico and Texas.

"I have been so surrounded with company and committees of invitation and a press of business since I reached home, that as yet I have not been able to look over my farm. It has rained constantly ever since I came here, as it did on my whole journey.

"I go to the neighborhood of Florence on a little private business in a few days, and as soon as I return will set out for the city, and will reach you, if health permits, by the 1st of October. My little family enjoy good health, and all join me in kind solicitations to you and yours.

"In haste, yours, respectfully,

"ANDREW JACKSON.

"A. DICKINS, Esq.,

"*Acting Secretary of State.*"

Having thus shown the terms and character of the claimant's services in the offices to which he was appointed, and the law by virtue of which the said appointments were made, it will hardly be necessary for your committee to go into an argument to show that, when the law authorized the President to appoint "any person or persons, at his discretion, to perform the duties of the said respective offices," it also contemplated paying such appointees for services rendered. The authority is to the persons appointed "*to perform the duties of the said respective offices,*" and the only fair measure of compensation is the amount of salary fixed by law as the salary of the officers whose duties Mr. Dickins performed. The Senate bill now under consideration allows the claimant such compensation less the amount he may have received during the same period as chief clerk.

The objection urged against this claim is the fact that Mr. Dickins was a government officer at the time of his appointment and promotion; and although appointed to a higher office, should only receive the salary attached to his subordinate position.

The United States Court of Claims, to whom this case was referred for adjudication, having pronounced the claim "well founded," quoted the following opinion from Chief Justice Taney, delivered in the United States circuit court for the Maryland district. It was delivered in the case of a navy agent who had been appointed *acting purser*:

"But he is entitled to set off the sum of \$5,328 08 for his salary as acting purser to the naval establishment at Annapolis. The Sec-

retary of the Navy had a right to appoint a purser *ad interim*, usually called acting purser, to discharge the duties of purser at this establishment, if the demands of the public service elsewhere, or any other sufficient cause, put it out of his power to employ a purser regularly appointed. The court is bound to presume that the power in this instance was exercised under circumstances that justified the appointment of the defendant as acting purser. He performed all the duties of purser at the naval establishment; settled his accounts with the proper officer at Washington as such, and not as navy agent; and was recognized as acting purser in the reports to Congress concerning certain expenditures chargeable to that branch of the service. The act of Congress fixes the salary of purser, when not otherwise provided for, at \$1,500 a year. As the defendant performed all the duties of the office, and performed them in the name and in the character of purser, he is entitled to the compensation which the law has provided for such services. *The circumstance that he held the office of navy agent at the same time can make no difference. There is no law which prohibits a person from holding two offices at the same time.* As a matter of policy it would certainly be highly objectionable in most cases as a permanent arrangement. But, in the absence of any legal provision to the contrary, this appointment was valid. Indeed, it often happens that in unexpected contingencies, and for temporary purposes, the appointment of a person already in office to execute the duties of another office *is more convenient and useful to the public than to bring in a new officer to execute the duty.* And if the duties of the second office are performed, and the law has fixed the compensation which it deems just for such services, *it cannot be material whether they are rendered by one holding another office or not, provided they are faithfully discharged.*" — (The United States vs. White and others, April term, 1851.)

Here we have a clear and distinct recognition of the principle upon which this claim rests by the federal judiciary, in an opinion delivered by the distinguished chief justice himself. But Congress, too, has recognized the same principle by positive statute. In the act entitled "An act to regulate the pay of the navy," approved March 3, 1835, it is provided that "officers temporarily performing the duties belonging to those of a higher grade shall receive the compensation allowed to such higher grade while actually so employed."

Again: in 1836 Mr. Forrester, from the Committee of Claims, made a report in a similar case to the one under consideration, in which he says:

"Offices under our government are in the nature of a *contract*. The government creates the office, prescribes the nature of the duties, and fixes the compensation; but the amount of services is generally contingent, and the government has the right to increase or diminish them at pleasure, because the officer agrees to this when he accepts the appointment. But the government has no right to demand services of a different character from that of his office, merely because he is already one of its officers, for that would be contrary to the understanding of both at the time he entered on the discharge of his duties; were it otherwise, an officer of humble station, and small com-

pensation, might be required to perform the duties of a highly responsible one, which, owing to its magnitude, has a large salary attached to it, and that contrary to his understanding when he accepted the one of less responsibility. This can neither be just nor legal."

Such was the very conclusive reasoning of your committee a quarter of a century ago, and Congress has from that day to this recognized and paid such demands, more especially when made by persons employed in the diplomatic service of the country. The statute-books contain numerous acts of the kind, which your committee deem it unnecessary to cite in detail.

The Court of Claims, governed by the learned opinion of Chief Justice Taney, reported a bill for the relief of the claimant in this case, allowing him both salaries, but the Senate bill only allows the difference between the pay of chief clerk and Secretary, during the period Mr. Dickins acted in the latter capacity. Your committee think the amount as allowed by the Senate bill is correct, and they therefore report back the bill without amendment, and recommend its passage.

